

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JODI L. CRANE,

Plaintiff,

v.

CITY OF DUNSMUIR, et al.,

Defendants.

No. 2:21-cv-0022-KJM-CKD (PS)

ORDER

Plaintiff Jodi Crane proceeds pro se in this civil rights action brought under 42 U.S.C. § 1983 with a third amended complaint filed on August 6, 2021, with claims against defendant Juhasz. (ECF No. 39.) Defendant's motion to strike (ECF No. 47) is before the court. This matter is appropriate for decision without oral argument. See Local Rule 230(g).

On August 23, 2021, defendant moved to dismiss the third amended complaint. (ECF No. 40.) Defendant's motion was set for a hearing to take place on September 29, 2021. That hearing date was subsequently vacated when plaintiff did not file a timely opposition. On September 22, 2021, plaintiff was ordered to show cause, in writing, why the failure to oppose the motion to dismiss should not waive the right to oppose the motion and why this action should not be dismissed due to the failure to file an opposition.

On October 4, 2021, plaintiff filed an opposition to the pending motion to dismiss. (ECF No. 46.) Plaintiff's October 4, 2021 opposition was titled "Plaintiff's Opposure to Defendants

Dismiss Third Amended Complaint.” (Id.) Despite this title, plaintiff’s October 4, 2021 opposition was entered into the court’s Case Management / Electronic Case Files docketing and file system, and thus appears on PACER, as “Fourth Amended Complaint against All Defendants and OPPOSITION to [ECF No.] 40 Motion to Dismiss by Jodi Crane.” (Id.)

Construing plaintiff’s October 4, 2021 filing as an amended complaint, defendant moves to strike the amended complaint. (ECF 47.) In moving to strike the document, defendant asserts the motion reads as an amended complaint rather than an opposition. (Id. at 1.)

Because plaintiff is a pro se filer, the description given to plaintiff’s October 4, 2021 filing was entered by court staff and not by plaintiff. Having reviewed the October 4, 2021 filing, the undersigned construes the filing as a response to the court’s order to show cause and opposition to defendant’s pending motion to dismiss the third amended complaint.

Based on the foregoing, IT IS ORDERED:

1. The Clerk of the Court is directed to correct the CM/ECF docket entry for plaintiff’s October 4, 2021 filing (ECF No. 46) by deleting “FOURTH AMENDED COMPLAINT against All Defendants” so that the entry reads “OPPOSITION to 40 Motion to Dismiss by Jodi Crane.”
2. Defendant’s motion to strike (ECF No. 47) is denied; and
3. The December 29, 2021 hearing on defendant’s motion to strike is vacated.

Dated: December 20, 2021

  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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